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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,272	11/05/2004	Shaun Hopkins	62694-022	5961
33401 7590 02/04/2009 MCDERMOTT WILL & EMERY LLP 2049 CENTURY PARK EAST 38th Floor LOS ANGELES, CA 90067-3208				
EXAMINER				
LEVY, NEIL S				
ART UNIT		PAPER NUMBER		
1615				
MAIL DATE		DELIVERY MODE		
02/04/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/501,272

Applicant(s)

HOPKINS, SHAUN

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4 - 10, 14, 17, 18, 21-23, 26-28, 32-35, 38-43 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 38-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4 - 9, 14, 17, 18, 21-23, 26-28, 32-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-849)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claim Rejections - 35 USC § 101

Claims 1, 4 - 10, 14,17,18,21-23,26-28,32-35,38-43 provides for the use of formulations, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 1, 4 - 10, 14,17,18,21-23,26-28,32-35,38-43 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claims 10, 38-43 are USE claims, & not statutory inventions & are not given further consideration .

Claims 1, 4 – 9, 14,17,18,21-23,26-28,32-35 are argued for as (p. 10, last paragraph of arguments of 10/27/02) formulations for use in repelling&/or killing- As such, it is unclear if these claims are to be considered as METHODS, rather than as formulations. If so, there are no method steps.

Examiner has considered these claims as formulations, with USE seen as future intended use of the compositions & thus continued rejections where appropriate –

Claim Rejections - 35 USC § 103

Claims 1,4-9,14,17 -18,21-23, 26-29, & 32-35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over MARENICK et al in view of VROMAN

MARENICK, has the instant compositions, but for cetrimonium chloride. See claim 6: neem oil, tea tree, thyme, lavender with claim 8, nettle and humectants of propylene glycol (claim 3) with water, triethanolamine, methyl paraben and propyl paraben and glycol stearate [0028].

These components are combinable in one multi-use topical composition. Concentrations are indicated in Tables; water to 80%, triethanolamine at 0.05-5% ,propyl and methyl paraben at 0.1-5%; Ceteryl alcohol 2.5-7.5%; glyceryl stearate at 0.1-5%; paraffin at 0.5-5%; lavender at 0.5-5%, as other oils. Thus, neem oil would be expected to be 0.5-5% also, as would tea tree, thyme and nettle.

For VROMAN, see Table 1: water, cetyl alcohol, 5-7% cetrimonium chloride, and tea tree oil, lavender oil, triethanolamine and parabens are all at about the instant %. Also useful is neem oil and nettle (page 4, top) cetearyl alcohol, propylene glycol (page 4, bottom).

Both references are in the field of skin care. It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize skin care means, to use Marenick

modified as desired to increase range of use of a topical composition, in order to provide a stable , safe from bacterial contaminant composition with good aesthetic properties.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve improved control as is well known in the art.

Applicant's arguments of 10/27/08 are that these references fail to show use as head lice repellents or killers. Examiner has examined the claims as compositions, with claimed use considered as future intended use, & not of patentable weight in consideration of the composition. Neither is patentable weight given for the specific use of each element of the claims- these elements are the ingredients of the prior art, whether or not used for the same purpose of applicant- they references are combinable, because the artisan would see they are in the same line of work, & the ingredients readily added to improve the stability, longevity & safety of the compositions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/
Primary Examiner, Art Unit 1615
